In the High Court of Punjab and Haryana at Chandigarh

I.T.A. No. 571 of 2006

Date of Decision: 26.02.2007

Smt. Usha Rani …Appellant

Versus

Commissioner of Income Tax, Ludhiana …Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S.K. Mukhi, Advocate,

for the Appellant.

M.M. KUMAR, J.

This order shall dispose of I.T.A. Nos. 571 and 574 of 2006.

Facts are being referred from ITA No. 571 of 2006. The assessee-appellant has approached this Court by filing aforementioned appeal under Section 260A of the Income Tax Act, 1961, claiming that the following substantial questions of law would emerge out of the order dated 19.4.2006, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (S.M.C.), Chandigarh, in I.T.A. No. 569/Chandi/2005, in respect of assessment year 1995-96:-

> "A. "Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of authorities below by upholding the reopening of the assessment u/s 148 of the Income Tax Act, 1961 as valid which finding of the ITAT

is bad in law as there was no assessment completed in respect of the original return filed with the department nor there was any record or application (of?) mind by the A.O."

B. "Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of authorities below by upholding the action of the A.O. in specific wherein the A.O. has clearly defied the judgement of the Hon'ble Supreme Court of India in the case of M/s. GKN DRIVESHAFTS (INDIA) LTD. V/S ITO AND OTHERS, 259 ITR 19(SC) wherein it has been clearly held that A.O. can not proceed with the assessment proceeding without first disposing off the objections raised by the assessee against the reasons recorded u/s 148 of the Income Tax Act, 1961."

C. "Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of authorities below by upholding the reopening on the basis of reasons recorded u/s 148 which reasons being illegal and so the proceeding also being illegal and thus needs to be quashed."

D. "Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the

action of authorities below by upholding the reopening of the assessment u/s 148 as valid on the basis of proceeding in the subsequent assessment year i.e. A.Y. 1996-97 which action of the ITAT is bad in law."

E. "Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of authorities below by upholding the addition made on account of impugned Gift of Rs. 1 Lakh?"

F. "Whether, on the facts and circumstances of the case, the ITAT was justified in confirming the action of authorities below by allowing only partial relief out of the opening balance being brought forward from earlier year which action of the ITAT is perverse."

G. "Whether, on the facts and circumstances of the case, the findings of ITAT are perverse and against the evidences on record thus unsustainable in law."

H. "Whether the ITAT has misdirected itself in being influenced by irrelevant factors and applying erroneous criteria while deciding the issue of genuineness of the impugned gifts & that of the opening balance."

We have heard learned counsel for the appellant at length and find that none of the aforementioned questions of law would arise for our determination because firstly it is found from a perusal of orders on record that reasons were recorded by the competent authority for initiation of proceedings under Section 148 of the Act. The sufficiency thereof cannot be gone into by this Court. It could not be successfully agreed that the reasons did not have any nexus with the material available with assessing officer. The authorities below have disbelieved receipt of gifts claimed by the assessee-appellant from Jaswinder Singh, Bharpur Singh, Major Singh, Maghar Singh and Manjit Singh. There is nothing on record to show relationship between the donor and the donee, capacity of the donor to make gifts and the occasion therefore. The assessee had failed to discharge the heavy onus. The Tribunal has opined that it is against the human probability that a stranger is claimed to have made gifts when admittedly most of the close relatives do not make any such huge gifts even if they are well off.

In view of the above, we do not find that any question much less a substantial question of law arises for our determination.

Dismissed.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

February 26, 2007
Pkapoor